



## **Executive Summary**

Malawi is open to foreign direct investment. In general there are adequate legal instruments to protect investors and such investors are accorded national treatment. Malawi's constitution prohibits deprivation of an individual's property without due compensation. There is an established mediation process to promote agreements between parties in disputes before court proceedings start. Both foreign and domestic investors have access to Malawi's legal system, which functions fairly well and is generally unbiased. All investors have the right to establish, acquire, and dispose of interests in business enterprises. Foreigners require a business residence permit (BRPs) to carry out any business activity in Malawi. Government continues to undertake various reforms to ensure that no tax, labor, environment, health and safety or other laws distort or impede investment. However, procedural delays and red tape continue to impede the business and investment approval process. Malawi has been largely free of political violence since gaining independence in 1964. Although divisions do exist, Malawi has no significant tribal, religious, regional, ethnic, or racial tensions that could be expected to lead to violent confrontation. Although progress has been made addressing the issue of corruption, it continues to be viewed as a major obstacle to doing business in Malawi. There have been serious allegations of corruption, which is perceived to be particularly endemic in the following sectors: Police, immigration, road traffic, tax administration, traditional leaders, and government procurement.

### **1. Openness To, and Restrictions Upon, Foreign Investment**

Malawi is open to foreign investment and foreign investors are generally granted national treatment. The Malawi constitution protects investment irrespective of ownership. The government encourages both domestic and foreign investment in most sectors of the economy without major restrictions on ownership, size of investment, source of funds, or the destination of the final product. Restrictions on foreign investment are few and are based on environmental, health, and national security concerns. Affected items are firearms and ammunition; chemical and biological weapons; explosives; and manufacturing involving hazardous waste treatment/disposal or radioactive material. Since industrial licensing in Malawi applies to both domestic and foreign investment, and is only restricted to a short list of products, it does not limit competition, protect domestic interests, or discriminate against foreign investors at any stage of investment. Restrictions are mostly regulations affecting trade (foreign exchange, taxes, etc.) and apply equally to domestic and foreign investors. While not discriminatory to foreign investors, investments in Malawi require multiple bureaucratic processes, which may include licensing and land use permissions that can be time consuming and may constitute an impediment to investment.

Despite the generally favorable attitude to foreign investment, investors face many challenges in terms of starting a business and these include lengthy procedures to incorporate and register a business with the Registrar General, and difficulties in obtaining temporary employment permits (TEP) and business residency permits (BRPs).

Apart from the privatization program, the government's overall economic and industrial policy does not have discriminatory effects on foreign investors. There is no government policy to screen foreign direct investment. However, Foreign Direct Investment (FDI) needs to be registered with the Malawi Investment and Trade Center (MITC) and the investment capital must be registered with the Reserve Bank of Malawi through any commercial bank in Malawi. The minimum investment qualifying is USD 50,000.00.

There has been no external investment policy reviews undertaken on Malawi by any international organizations. However, the World Trade Organizations conducts periodic "Trade Policy Reviews" on Malawi. The last one was conducted in 2011. These trade policy reviews have informed future co-operation and assistance to Malawi.

The Malawi Growth and Development Strategy (MGDSII) (2011-2016) identifies a number of sectors as priority growth areas. FDI is particularly encouraged in Agriculture, Mining, Tourism, Energy and Transport Infrastructure. Sugar cane production and processing, legumes, livestock production and dairy farming, irrigation farming, and large scale commercial agriculture have the highest priority in the agricultural sector. Independent power producers particularly for hydropower and other renewable power sources are encouraged. Government is also calling for the private sector (both local and foreign) to develop the tourism sector. A nation-wide resource mapping project supported by the World Bank and the French Government is underway to define Malawi's mineral resources. Private sector led mineral exploration is also promoted. One restriction in the mining industry is that small-scale prospecting and mining operations are reserved for Malawians and foreigners who have resided in Malawi for a minimum of four years.

The Malawi Competition and Fair Trading Act (CFTA) (1998) only became operational in 2005. Since its passage, the CFTA has governed the review and determinations on over a dozen mergers and acquisitions and cases of alleged abuse of a dominant position by an enterprise. The CFTA's role is to encourage competition in the economy, to regulate and monitor monopolies and concentrations of economic power, to protect consumer welfare and to ensure the best possible fair market conditions. So far no mergers or acquisitions have been disapproved and there have been no reported cases of contested decisions of CFTA.

Malawi has privatized 66 formerly state-owned enterprises. A revised divestiture sequence plan to privatize another 65 public enterprises stalled in the cabinet and government decided to revive the original divestiture plan but with emphasis on public/private partnerships other than outright sales as was the case under this plan. Malawi has about 60 state-owned enterprises that are involved in commercial operations particularly in the public utilities sector, agriculture, housing, finance, education and aviation. All investors, irrespective of ethnic group or source of capital (foreign or local) may participate in the privatization program. However, Malawi Stock Exchange regulations limit participation of an individual foreign portfolio investor to a maximum of 10% of any class or category of security under the program and limit maximum total foreign investment in any portfolio to 49%. Malawian nationals are offered preferential treatment, including discounted share prices and subsidized credit. Subsidized credit carries a precondition that the shares or assets be retained for at least two years.

**TABLE 1:** The following chart summarizes several well-regarded indices and rankings.

Measure	Year	Rank or value	Website Address
TI Corruption Perceptions index	2013	(91 of 177)	<a href="http://cpi.transparency.org/cpi2013/results/">http://cpi.transparency.org/cpi2013/results/</a>
Heritage Foundation's Economic Freedom index	2013	(124 of 177)	<a href="http://www.heritage.org/index/ranking">http://www.heritage.org/index/ranking</a>
World Bank's Doing Business Report "Ease of Doing Business"	2013	(161 of 189)	<a href="http://doingbusiness.org/rankings">http://doingbusiness.org/rankings</a>
Global Innovation Index	2013	(119 of 142)	<a href="http://www.globalinnovationindex.org/content.aspx?page=gii-full-report-2013#pdfopener">http://www.globalinnovationindex.org/content.aspx?page=gii-full-report-2013#pdfopener</a>
World Bank GNI per capita	2012	USD 320	<a href="http://data.worldbank.org/indicator/NY.GNP.PCAP.CD">http://data.worldbank.org/indicator/NY.GNP.PCAP.CD</a>

**TABLE 1B - Scorecards:** The Millennium Challenge Corporation, a U.S. Government entity charged with delivering development grants to countries that have demonstrated a commitment to reform, produced scorecards for countries with a 2012 per capita gross national income (GNI) or \$4,085 or less. A list of countries/economies with MCC scorecards and links to those scorecards is available here: <http://www.mcc.gov/pages/selection/scorecards>. Details on each of the MCC's indicators and a guide to reading the scorecards are available here: <http://www.mcc.gov/documents/reports/reference-2013001142401-fy14-guide-to-the-indicators.pdf>.

## 2. Conversion and Transfer Policies

There are no restrictions on remittance of foreign investment funds (including capital, profits, loan repayments and lease repayments) as long as the capital and loans were obtained from foreign sources and registered with the Reserve Bank of Malawi (RBM). The terms and conditions of international loans, management contracts, licensing and royalty arrangements, and similar transfers require initial RBM approval. The RBM grants approval according to prevailing international standards; subsequent remittances do not require further approval. All commercial banks are authorized by the RBM to approve remittances, and approvals are fairly automatic as long as the applicant's accounts have been audited and sufficient foreign exchange is available. In practice, foreign exchange availability is very limited and remittances periodically cannot be made immediately. Foreign exchange availability improved in 2013 after the local currency was devalued and floated in May 2012. The foreign exchange market has experienced major volatility and, as a result, businesses have experienced difficulties in planning for import bills for their imported raw materials. 2013 was a very exceptional year in Malawi. Foreign exchange supply was adequate throughout the year and Malawi's import cover remained above two

months even during the traditional lean periods. Traditionally, foreign exchange availability follows the agricultural cycle. It is generally plentiful from April through September (when tobacco sales generate foreign exchange inflows), and scarce from October through March. During periods of scarcity, investors may experience extended periods without access to foreign exchange. The Reserve Bank of Malawi (RBM) devalued and floated the Malawi Kwacha exchange rate on May 7, 2012. Since then, the value of the kwacha against the USD has experienced very wide swings, moving from 168 to 422 Malawi Kwacha to one USD before moving back to 360 and then up again to 450 Malawi Kwacha to the USD, all in a period of less than 18 months.

### **3. Expropriation and Compensation**

Malawi's constitution prohibits deprivation of an individual's property without due compensation. There are effective laws that protect both local and foreign investment. The likelihood of direct expropriations has been low since the repeal of the Forfeiture Act in 1992. Some measures with expropriatory effects are occasionally imposed. For example, in both 2008 and early 2012 the government imposed export bans on maize which have not been lifted. Furthermore, the government unilaterally revoked the licenses of all private maize traders in the country. These restrictions applied equally to foreign and domestic investors. Although public tenders for the sale of shares of state-owned enterprises often require local participation, foreign investors tend to dominate the share-holding of large Malawi Stock Exchange-listed companies requiring significant technical and financial resources.

The Land Reform Commission—which the government established in 1996 to review land tenure and establish a new land reform program—presented its final report to the President in November 1999. In January 2002, the Ministry of Lands published a new land policy. Draft legislation consisting of six bills have been prepared that incorporates many recommendations of the Commission's report. These bills are: the Land Acquisition Act Amendment ( provides for compensation of persons affected by land acquisition), the Registered Land Act ( bill provides for title registration for all land categories including customary estates), the Physical Planning Bill (seeks to enforce orderly and progressive development of land in both rural and urban areas and to preserve and improve land amenities), the Land Survey Bill (seeks to establish Land Surveyors Registration Board, Malawi Geographic Information Center, licensing and control of Land surveyors), the Local Government Amendment (seeks to introduce consequential amendment to the Local Government Act emanating from the proposed new land laws), and the Customary Land Bill (seeks to repeal the Customary Land Act and replace it with new legislation on the management and regulation of customary land) including the abolition of freehold tenure [owners holding permanent title] and the conversion of all freehold titles to leasehold (owners holding land on lease for a maximum period of 99 years). The Ministry of Lands and the cabinet have approved these new bills and presented them to the Malawi Parliament in 2013. None of the bills have been passed to become law due to public outcry that more consultations need to be done. Since July 2000, the Malawi Government stopped issuing new freehold land certificates in anticipation of this new legislation. However, freehold land is still transferable to both Malawians and non-Malawians. Land of all tenures continue to be tradable regardless of nationality though Malawians are given the first priority. If a foreigner wants to buy leasehold land, the offer price must be publicly declared in a newspaper. If no

Malawian comes up with a counter offer, the land transfer can be affected; otherwise the interested Malawian is offered the land to buy instead.

There are three types of land tenure in Malawi---Customary land (controlled by traditional leaders), Public Land (controlled by government—local and/or central government) and Leasehold (legal title held by private individuals or company). Leasehold title can either be for a fixed period (25-99 years renewable) or freehold (usually 99 years and above). The bulk of land in Malawi is under customary tenure with land passing on to the next generation through blood relation (hereditary) or through the traditional chief to a new settler (this applies to unused/unclaimed land).

At present, the government may employ land acquisition procedures set forth in the Land Acquisition Act of 1971. According to this Act, the government must justify its acquisition as being in the public interest and must pay fair market value for the land. Fair market value is assessed by summing the amount the owner originally paid for the land, the value of any permanent improvements that increase the productive capacity, utility or amenity of the land, and any appreciation of the land value. If the private landowner objects to the level of compensation, he may obtain an independent assessment of the land value. According to the Act, however, such cases may not be challenged in court; the Ministry of Lands, Housing and Urban Development remains the final judge.

#### **4. Dispute Settlement**

Malawi has an independent judiciary, which derives its procedures from English Common Law. There has been little government interference in the court system. The commercial courts are working efficiently now that they have qualified personnel who are working toward the improvement of the court system in Malawi. The Commercial Court in Blantyre has three judges, and has its own registry. There is an established mediation process to promote agreements between parties in disputes before court proceedings start.

Although processing of commercial cases has significantly improved in the court system, enforcement of judgments continues to be a problem. The Commercial Court now has one dedicated enforcement Sheriff. Before that the Commercial Court used Sheriffs assigned to the High Court who did not grant priority to commercial enforcements.

The court system in Malawi accepts and enforces foreign court judgments that are registered locally in accordance with established legal procedure. There are reciprocal agreements among Commonwealth countries to enforce judgments without this registration obligation. However, the fact that there is no such agreement between Malawi and the United States does not mean that judgments involving the two countries cannot be enforced.

Malawi has legislation that offers adequate protection for property and contractual rights. Malawi has written commercial laws which codify Common Law. The Sale-Of-Goods Act, the Hire-Purchase Act, the Competition Fair Trading Act, and the Companies Act cover commercial practices. The first two acts have been consistently applied, and there is a track record of cases involving commercial law. In 2007, Malawi established a Commercial Court in the city Blantyre.

The Lilongwe division of the Commercial Court opened in 2010 and has two judges. There is also a written and consistently applied Bankruptcy Law based on Common Law. Under the Bankruptcy Law, secured creditors—rank-ordered based upon investment registration dates—have first priority in recovering money. Monetary judgments are usually made in the investor's currency. However, the immediate availability of foreign exchange is dependent upon supply, which varies on a seasonal basis and was chronically low for the past four years. The 2006 Money Laundering, Proceeds of Serious Crime and Terrorist Financing Act established an autonomous Financial Intelligence Unit (FIU) to combat money laundering and terrorist financing. The FIU is responsible for analyzing disclosures from financial institutions and referring actionable cases to competent authorities. It is also mandated to monitor compliance by reporting institutions.

Malawi is a member of the International Center for Settlement of Investment Disputes (ICSID), and accepts binding international arbitration of investment disputes between foreign investors and the state if specified in a written contract. There have been no major investment disputes involving U.S. companies since 1996.

## **5. Performance Requirements and Investment Incentives**

Malawi is not in compliance with World Trade Organization (WTO) Trade Related Investment Measures (TRIM) notification requirements. Malawi does not set performance requirements for establishing, maintaining or expanding an investment, nor does it place requirements on source of financing, or geographic location. The government accords Export Processing Zone (EPZ) status only to firms (foreign or domestic) that produce exclusively for export.

The Malawi Government offers a wide range of tax and non-tax incentives which apply equally to domestic and foreign investors. These incentives apply to several sectors including manufacturing, agriculture, mining and others relating to businesses in general. Customs and excise tax incentives are provided on raw materials, machinery and equipment in the following sectors: construction, electricity generation and distribution, communication, tourism, agriculture, transport, mining, health, education, banking, and EPZs. Two priority industries have been targeted for tax relief: agro-processing and electricity generation, transmission and distribution. A detailed list of these incentives can be found at the Malawi Investment and Trade Center (MITC) website: [www.mitc.mw](http://www.mitc.mw).

The above incentives are applied consistently but many companies have complained about long delays in accessing the accrued benefits, especially those that require investors to spend first and claim later.

Foreign investors are generally accorded the same treatment as nationals. U.S. and other foreign firms are able to participate in government/donor-financed and/or subsidized research and development programs. The following information is required to register and incorporate a company: name of the company, authorized share capital, registered office, location of account books, address of the company secretary, and the names of directors and shareholders. There is also a requirement that at least two Malawian residents be appointed directors for such a subsidiary company.

Visas do not inhibit investors, but the need for employment permits sometimes can. Expatriate employees (of both domestic and foreign businesses) who reside and work in Malawi must obtain temporary employment permits (TEPs). TEPs have been very difficult to obtain in some instances.

Government policy on TEPs has been unchanged since a "Policy Statement and New Guidelines for The Issuance and Renewal of [Expatriate] Employment Permits" was issued in November 1998. The guidelines state that investors may employ expatriate personnel in areas where there is a shortage of "suitable and qualified" Malawians. The policy provides for two types of TEPs:

- Those for "key posts" (defined as positions of "strategic importance" in business operations) which are granted for the lifespan of the organization.
- Those for "time posts" (defined as positions with contracts of three-year duration or less) which are granted for three-year periods and renewable once.

The policy underscores the government's desire to make TEPs readily available to expatriates, and mandates that processing times for TEP applications shall not exceed 40 working days. In practice these guidelines have been applied inconsistently, leading to delays and considerable uncertainty.

## **6. Right to Private Ownership and Establishment**

The government encourages both domestic and foreign investors to establish and own business enterprises in most sectors of the economy. All investors have the right to establish, acquire, and dispose of interests in business enterprises. Foreigners require a business residence permit (BRPs) to carry out any business activity in Malawi. The government issues BRPs to foreign nationals who own/operate businesses. BRPs are issued for five-year periods and are renewable. Permanent Residence Permits (PRPs) are issued to foreign spouses who reside permanently in Malawi, and to owners/operators of businesses who reside in Malawi for periods in excess of ten years. PRP holders cannot work as employees. Malawi's immigration laws governing BRPs and PRPs have been revised. There are three categories of residence permits based on the amount of investment, the status of applicant (investor, retiree, student, or wife of a Malawian citizen) and the period of the business assignment. The maximum number of resident permits per organization is five positions, with the actual number allowed depending on the amount of investment.

There are some restrictions to land ownership by foreigners. Sale of land to foreigners is approved only after no Malawian has shown interest to match the price offered by the foreigner. However, land acquired as part of a business establishment is not subject to this rule.

## **7. Protection of Property Rights**

Both foreign and domestic investors have access to Malawi's legal system, which functions fairly well and is generally unbiased. Heavy caseloads and staffing limitations, however, mean that legal remedies can take a long time to achieve. Malawi has laws that govern the acquisition, disposition, recording and protection of all property rights (land, buildings, etc.) as well as intellectual property rights (copyrights, patents and trademarks, etc.).

### ***Real Property***

Efforts to improve on Land Tenure are underway. At present most land is under customary land tenure with occupants holding no legally bidding title. More than half of arable land is untitled (customary). Government has developed draft legislation to legalize customary land tenure to leasehold title so that those currently using that land can have legal rights to the land. This would enable them to use such land as collateral for acquiring financing to develop the land and/or to finance other business ventures. However, traditional leaders are against this development as it will limit their powers over land once the draft bills are passed into law. Government has been preparing for these new developments and already started training people to be engaged as land surveyors and registrars at the local government level. Currently record keeping for registering land ownership is centralized and inefficient. Efforts are underway to computerize the recordkeeping and to decentralize to the district councils.

Malawi recognizes the importance of intellectual property (IP) protection and enforcement but lacks adequate resources to do so. The Registrar General administers the Patent and Trademarks Act, which protects industrial intellectual property rights in Malawi. A public registry of patents and patent licenses is kept. Patents must be registered. Trademarks are registered publicly following advertisement and a period of no objection. The government has signed and adheres to bilateral and multilateral investment guarantee treaties and key agreements on intellectual property rights. Malawi is a member of the convention establishing the Multilateral Investment Guarantee Agency, the World Intellectual Property Organization (WIPO), the Berne Convention, and the Universal Copyright Convention. Enforcement of IP is inadequate due to resource constraints. However, general awareness of the importance of protecting IP in all forms (copyrights, trademarks, patents, trade secrets, and others) has improved. IP enforcement agencies have commemorated the World IP Day on April 26 for the past two years and this has helped to promote the importance of IP protection in the country. Malawi is not listed in USTR's Special 301 Report.

The Copyright Society of Malawi (COSOMA), established in 1992, administers the 1989 Copyright Act which protects copyrights and "neighboring" rights in Malawi. WTO rules allow Malawi (as a less developed country) to delay full implementation of the Trade-Related Aspects of Intellectual Property Rights (TRIPs) agreement until 2021. The Ministry of Industry and Trade is working with COSOMA, the Registrar General, and the Africa Regional Intellectual Property Organization (ARIPO) to align relevant domestic legislation with the WTO TRIPs agreement.

For additional information about treaty obligations and points of contact at local IP offices, please see WIPO's country profiles at <http://www.wipo.int/directory/en/>.

Embassy point of contact: Heather Dresser, DresserHL@state.gov

Local attorneys list: <http://lilongwe.usembassy.gov/service15.html>

## **8. Transparency of the Regulatory System**



Malawi's industrial and trade reform program—including rationalization of the tax system, liberalization of the foreign exchange regime, and the elimination of trade and industrial licenses for several items and businesses—has produced written guidelines intended to increase government use of transparent and effective policies to foster competition. Government continues to undertake various reforms to ensure that no tax, labor, environment, health and safety or other laws distort or impede investment. However, procedural delays and red tape continue to impede the business and investment approval process.

While market prices for goods are generally not controlled, prices of most agricultural goods such as maize and state-provided utilities are regulated. In recent years the government has announced “minimum prices” for tobacco, cotton and maize which buyers have been obliged to offer, under threat of the loss of their buyers’ licenses. Buyers have complained of a lack of transparency in the setting of these prices. This led the largest cotton ginning company in Malawi, a U.S. company, to withdraw from the country in 2009 after the government-set minimum prices for cotton were deemed too high for profitable operations. The new government that took office in April 2012 has moved away from the antagonistic tendency of the previous government against buyers in commodity markets such as tobacco and cotton though minimum prices are still being released. Government has instituted automatic pricing mechanisms for fuel and electricity prices. In addition to these progressive reforms, the government removed a levy on fuel for a price stabilization fund and thereby mitigated overall price increases while removing a contentious tax whose account had been misappropriated by the government in the past.

There have been positive steps toward increasing regulatory transparency and improving the foreign investment environment. The government also privatized Air Malawi, the loss making national airline in 2013 when Ethiopian Airlines acquired a 49% stake. Air Malawi was renamed Malawian Airlines and is under the management of Ethiopian Airlines.

## **9. Efficient Capital Markets and Portfolio Investment**

The Malawi government recognizes the importance of foreign portfolio investment and has made efforts to provide for a platform for such investment through the establishment of a Malawi Stock Exchange (MSE). MSE hosts about a dozen listed companies. Most of these companies are local and a few are transnational. The MSE is regulated by the Reserve Bank of Malawi. The Companies Act, the Capital Market Development Act (1990), and the Capital Market Development Regulations (1992) as amended in 2013 provide the legislative and regulatory framework for portfolio investment in Malawi. These acts govern the MSE. Foreign investors can buy and sell shares at the stock market without any restrictions. Trading in shares can either be direct or through established stock market brokers. Stockbrokers Malawi Limited (SML) is the major registered stockbroker in Malawi. Other brokerage firms are Continental Discount House, First Discount House and Trust Securities Limited. The MSE is regulated by the Stock Exchange Commission. SML also runs a secondary market in government securities, and both local and foreign investors have equal access to the purchase of these securities.

The MSE is still in a nascent stage, and hostile takeovers have not yet occurred. The demand and supply of shares for existing listed companies is therefore limited. However, demand for newly listed companies always exceeds shares on offer.

Apart from the restrictions under the privatization program (prohibiting 100% foreign ownership), there are no specific measures taken by private firms or government to restrict foreign investment or participation. Foreign investors tend to be the dominant shareholders in large MSE-listed companies requiring significant technical and financial resources. Liquidity for stock market participation is not a major problem as the private sector in Malawi has a variety of credit instruments. Credit is generally allocated on market terms. The main problem is the cost of such credit finance. Foreign investors may utilize domestic credit, but proceeds from investments made using local resources are not remittable.

Malawi has a sound banking sector, overseen and regulated by the Reserve Bank of Malawi—the central bank. There are twelve full-service commercial banks. Malawi's four largest banks (National Bank of Malawi, First Merchant Bank, Standard Bank, and New Building Society Bank) command 90% of the market, with a total capitalization of over \$2 billion.

The Competition and Fair Trading Act does not cover the day-to-day trading on the MSE, but regulates mergers, acquisitions, and takeovers.

## **10. Competition from State-Owned Enterprises**

Malawi has over 60 State-Owned Enterprises (SOEs) scattered across many industries/sectors including agriculture and agribusiness, education, construction, energy, finance, health, information and communication, media, and services. A list of these enterprises is available at the Office of the President and Cabinet. Government does not publish such list in the media. These enterprises are defined by the level of support that they require from government in order to operate, that is, those that are listed as fully funded, partially funded and fully commercial. Government is sometimes required to bail out “commercially” run SOEs when they have incurred losses. Private and public enterprises freely compete on the same terms and conditions for access to markets, credit and other business opportunities. There are exceptions, however, for some public works assignments where public enterprises tend to be given special preference by government. There have been several instances in the past where public enterprises such as the Agricultural Development and Marketing Corporation (ADMARC) and the Small-holder Farmers Fertilizer Revolving Fund (SFFRF) have been awarded contracts to distribute subsidized agricultural inputs without competing with private sector enterprises. These SOEs also access cheap financing from government thereby acquiring unfair advantage over private sector traders in the agricultural sector. There are no set rules or criteria on such exceptions—the government tends to decide (often capriciously) on a case by case basis. In general SOEs tend to get a bigger share of government contracts than privately-owned enterprises. Not all SOEs perform public function mandates. Malawi has a mixed bag system of SOEs where some SOEs are purely performing a public good function, others are commercial, and the rest both. All SOEs are subject to government regulations that apply to other government departments including employment and on procurement procedures, though some variations apply to some.

All SOEs are required by law to produce annual reports, which are not always audited by independent professional audit firms despite the law requirement.

SOEs in the agriculture, education and health sectors spend more on research and development than private sector players (both local and foreign) and they tend to do so for the public good than for profit.

SOEs are subject to the same taxes including value added tax as their private sector counterparts. However, capital acquisition (motor vehicles, equipment and machinery) are not subject to the same taxes. SOEs, particularly non-profit SOEs, also enjoy better and preferential access to land than private sector competitors, for example a government run agricultural college or research institution.

All State Owned Enterprises (SOEs) report to a line ministry but also have a Chairperson and Board of Directors. The boards are composed of politicians and professionals as directors. All such boards also have senior government officials representing government departments as ex-officio/non-voting members. The participation of members of the government as ex-officio/non-voting members on these boards creates a perceived and/or real conflict of interest.

Malawi does not have a Sovereign Wealth Fund or Asset Management Bureau.

Although signed in April 2011, the U.S. Government's Millennium Challenge Corporation (MCC) US\$350.7 million Compact was put on operational hold in mid-2011 owing to concerns over negative trends in economic and political governance. The Compact was re-instated in June 2012 after President Banda's positive steps to address the MCC concerns that led to its operational hold and eventual suspension. The MCC Compact Program entered into force in September 2013 and focuses on the power sector (strengthening ESCOM and transmission and distribution infrastructure) and promoting private sector investment in power production.

## **11. Corporate Social Responsibility**

There is a well-developed sense of corporate social responsibility in Malawi and most corporate entities make a point to publicize such activities in the local media. Large domestic companies and international enterprises tend to be more active and generous than small domestic companies. There are no established laws and regulations governing Corporate Social Responsibility (CSR), nor does the government direct destination of CSR to particular sectors. However, there are laws governing protection of the environment and waste disposal for producers and consumers. Enforcement of these regulations is, however, inadequate. Government expects all enterprises to follow all laws of Malawi regarding employment and compensation. Malawi has enacted a number of labor laws governing employment, work environment, industrial safety, age limits, hours of work and minimum wages among many others.

Government has enacted accounting standards that conform to international standards that the corporate sector is expected to adhere to. However, executive compensations are not defined.

All MSE listed companies are required by law to publish their annual audited accounts in the local newspapers. Listed companies are also required to publicly declare their profits, dividends to be paid out, planned takeovers (or major portfolio investments in or out of the company) and all relevant information that shareholders need to make informed decisions. They are also required to announce their annual shareholders meetings in the newspapers.

## **12. Political Violence**

Malawi has been largely free of political violence since gaining independence in 1964. Apart from the disarming of the Malawi Young Pioneers, a paramilitary group active during Malawi's 1994 transition to democracy, incidents of violence have been few. Sporadic violence occurred in the run-up and immediately following the 2004 elections. Presidential and parliamentary elections in May 2009 were peaceful, with no significant incidences of violence. On July 20 and 21, 2011, nationwide demonstrations over economic and political governance turned violent and 20 Malawians died in the civil unrest that ensued. There was a peaceful transition of power after President Mutharika's death to his Vice President, Joyce Banda, who was not a member of Mutharika's ruling party at the time of his death. Despite two days of uncertainty, the constitution was followed and Joyce Banda was sworn in as the new president. Presidential, parliamentary, and local government elections will take place in May 2014. Each major party and presidential candidate has committed to running a peaceful and nonviolent campaign.

Although divisions do exist, Malawi has no significant tribal, religious, regional, ethnic, or racial tensions that could be expected to lead to violent confrontation. Incidents of labor unrest occasionally occur, but these are usually nonviolent. There are no nascent insurrections or other politically motivated activities of major concern to investors. However there have been some political tensions with neighboring Mozambique, Zambia, and Tanzania in recent times. Tanzania and Malawi are currently trying to resolve a border dispute over the North Eastern portion of Lake Malawi.

## **13. Corruption**

The Corrupt Practices Act (No.18 of 1995), under Section 4(1) establishes the Anti-Corruption Bureau (ACB). The Director and the Deputy Director of the Bureau are both appointed by the President subject to confirmation by the Public Appointments Committee of Parliament. The Bureau began full operations in 1998. On April 16, 2004 the Corrupt Practices Act was amended giving the ACB increased powers to carry out its work of controlling corruption in Malawi. The definition of corruption was widened to include, among other things, offences for abuse of office and possession of unexplained wealth.

As a result of the amendment, the Act provides for the investigation of cases not only for corruption but for other offences that come to light during the course of investigating corruption. The Act also provides for protection of "whistleblowers," which was absent in the original law. The ACB has a legal mandate of preventing corruption in Malawi. It is therefore given the function of taking a lead in the fight against corruption.

The law provides for criminal penalties for corruption by officials. There were numerous reports of government corruption at the national and local level during the reporting period. Beginning in September 2013, a national corruption scandal known as “Cashgate,” involving the theft of at least 20 billion MWK (\$49 million) through fraudulent transactions using the government’s automated payments system, gained significant attention among the government, donors and civil society. Although the fraudulent transactions began as early as 2010, they peaked in the middle of the year, according to investigators. More than 70 individuals were arrested; their prosecution is underway.

Although progress has been made in addressing the issue, corruption continues to be viewed as a major obstacle to doing business in Malawi. There have been serious allegations of corruption, which is perceived to be particularly endemic in the following sectors: police, immigration, road traffic, tax administration, traditional leaders, and government procurement.

Malawi recognizes that the fight against corruption cannot be won without the involvement of all. Thus, companies are encouraged to participate in the fight. The Bureau has embarked on a program to assist institutions to develop and implement Corruption Prevention Policy frameworks as a way of mainstreaming anticorruption initiatives into their operations. Many companies have signed up to the anti-corruption campaign. The business sector has its own anti-corruption campaign drive called “Business Action Against Corruption” and deals with corruption issues within the private sector. The civil society organizations also formed their own institution called “Civil Society Action Against Corruption” to deal with corruption within the civil society. Malawi signed and ratified the UN Anticorruption Convention. Malawi subscribes to the provisions of the OECD Anti-bribery Convention, though it is not yet a signatory to the Convention. Malawi’s Penal Code prohibits bribery. Giving or receiving a bribe—whether to or from a Malawian or foreign official—is a crime under Malawi’s penal code.

ACB co-operates with other anti-corruption bureaus in the region.

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## **14. Bilateral Investment Agreements**

Malawi's policy is to negotiate bilateral investment treaties with countries whose nationals opt to invest in Malawi. Malawi has signed investment agreements Italy, Libya, Netherlands and

Zimbabwe. Bilateral investment agreements have also been initialed with Brazil, China, Germany, India and the OPEC Fund for International Development.

Malawi acceded to the Multilateral Investment Guarantee Agency (MIGA) in 1985/86. Malawi has not renewed several investment treaties that lapsed after 1986 since MIGA provides mechanisms for the settlement of investment disputes.

## **15. OPIC and Other Investment Insurance Programs**

Malawi has had an OPIC investment guarantee agreement since 1967. In August 1999, the U.S. Export-Import Bank included Malawi under its new Africa Short-term Export Credit Insurance Program.

## **16. Labor**

The Government of Malawi estimates that more than half of the population is of working age. Unskilled labor is plentiful. Skilled and semi-skilled labor is scarce. Occupational categories with skills shortages include accountants and related personnel, economists, engineers, primary and secondary school teachers, lawyers, and medical/health personnel. The University of Malawi provides bachelors and masters degrees in economics, engineering, medicine, education, agriculture and administration. The Malawi College of Accountancy teaches accounting. Chancellor College operates the country's law school. In early 1999, the government established the Technical, Entrepreneurial and Vocational Education and Training Authority (TEVETA) program to address technical skills shortages in industry.

The Labor Relations Act (LRA), enacted in 1997, governs labor-relations management in Malawi. The Act allows strikes and lockouts for registered workers and employers after dispute settlement procedures in collective agreements and conciliation have failed. As trade union rights have existed only since the transition to multiparty democracy in 1994, industrial relations are still evolving. Employers, labor unions, and the government lack sufficient knowledge of their legitimate roles in labor relations/disputes.

Workers have the legal right to form and join trade unions. Twenty-nine unions are registered. Union membership is low, however, given the small percentage of the work force in the formal sector, the lack of awareness of worker rights and benefits, and a resistance on the part of many employees to join unions. Only 18% of people employed in the formal sector belong to unions. Unions may form or join federations and have the right to affiliate with, and participate in, the affairs of international workers' organizations. While the government is a signatory to the ILO Convention protecting worker rights, mechanisms for enforcing the provisions of the convention are weak. There are serious manpower shortages at the Ministry of Labor, resulting in very few labor-standards inspections. There was no new legislation enacted during the reporting period.

## **17. Foreign Trade Zones/Free Ports**

Legislation for the establishment of export processing zones (EPZs) came into force in 1995. All companies engaged exclusively in manufacture for export may apply for EPZ status. As of April 2014, 13 were operating under the EPZ scheme. Almost all of these are foreign owned companies though the law does not discriminate on ownership. A Manufacturing Under Bond (MUB) scheme offers slightly less attractive incentives to companies that export some, but not all, of their products. Most investors prefer to operate under EPZ arrangement.

## 18. Foreign Direct Investment and Foreign Portfolio Investment Statistics

**TABLE 2: Key Macroeconomic data, U.S. FDI in host country/economy**

	Host Country Statistical source*		USG or international statistical source		USG or international Source of data (Source of Data: BEA; IMF; Eurostat; UNCTAD, Other)
<b>Economic Data</b>	Year	Amount	Year	Amount	
Host Country Gross Domestic Product (GDP) (Millions U.S. Dollars)	2012	\$4.557 billion	2012	Amount \$4.264 billion	<a href="http://www.worldbank.org/en/country">http://www.worldbank.org/en/country</a>
<b>Foreign Direct Investment</b>	Host Country Statistical source*		USG or international statistical source		USG or international Source of data: BEA; IMF; Eurostat; UNCTAD, Other
U.S. FDI in partner country (Millions U.S. Dollars, stock positions)	2012	Data not Available	2012	Amount 2.0	<a href="#">(BEA) click selections to reach.</a> <ul style="list-style-type: none"> <li>• Bureau of Economic Analysis</li> <li>• Balance of Payments and Direct Investment Position Data</li> <li>• U.S. Direct Investment Position Abroad on a Historical-Cost Basis</li> <li>• By Country only (all countries) (Millions of Dollars)</li> </ul>
Host country's FDI in the United States (Millions U.S. Dollars, stock positions)	2012	Data not Available	2012	Amount 0.0	<a href="#">(BEA) click selections to reach</a> <ul style="list-style-type: none"> <li>• Balance of Payments and Direct Investment Position Data</li> <li>• Foreign Direct Investment Position in the United States</li> </ul>

					on a Historical-Cost Basis • By Country only (all countries) (Millions of Dollars)
Total inbound stock of FDI as % host GDP ( <i>calculate</i> )	2012	2.8		Amount	

\* Malawi National Statistics Office.

### TABLE 3: Sources and Destination of FDI

No data is posted for Malawi <http://cds.imf.org>

### TABLE 4: Sources of Portfolio Investment

No data is available for Malawi <http://cds.imf.org>.

Malawi is one of the least developed and most densely populated countries in the world.

Malawi's economy is based on agriculture which accounts for over 30% of GDP and 90% of export revenues. Small shareholder agriculture is the source of income for more than 80% of the population. Malawi's economy depends on substantial inflows of foreign aid from the IMF, the World Bank, and individual donor nations.

Both the Reserve Bank of Malawi (RBM) and the Malawi Investment and Trade Center (MITC) maintain records on the value and composition of Foreign Direct Investment (FDI) in Malawi. Neither the RBM nor MITC, however, currently capture actual FDI figures. The following chart shows the amount of approved FDI into Malawi since 2005 as well as its relative percentage of the GDP for that year.

Year	FDI Inflows (US\$)	% GDP
2005	52,327,161	1.8
2006	72,192,866	2.3
2007	92,055,126	2.6
2008	195,424,461	4.6
2009	49,130,855	1
2010	97,010,028	1.8
2011	92,407,704	1.6
2012	129,500,000	3.0

Source: Annual Economic Reports, Malawi Government.

Foreign Direct Investment (FDI) from 2005 to 2012 ranged from 1 to 4.6% of GDP. The prospect for future FDI is bright following government's move to devalue and float the currency, the Malawi Kwacha. Malawi's government is implementing its economic recovery plan that is expected to stimulate the growth of the economy and attract foreign direct investment. The



economy is likely to grow by between 4.6% and 5.5% in 2013 according to international forecasts. The liberalization of the exchange rate regime is an important step toward improving Malawi's investment climate.

#### **19. Contact Point at Post for Public Inquiries**

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